

## RULES FOR LAND, GRAZING, AND FARMING DISPUTES

### I. GENERAL RULES

- A. **Purpose.** These rules are for the purpose of resolving land, grazing, and farming disputes by exhausting administrative remedies in a just manner without resorting to litigation.
- B. **Scope of Rules.** The DGC/ENLB/FB Member will investigate and attempt to mediate any disputes. If the first initial mediation is unsuccessful, the DBC/ENLB/FB will conduct a second mediation and make a recommendation, if the recommendation is not appealed it will be enforced by DRE. If a recommendation is appealed a hearing will be scheduled and a decision will be issued by OHA and orders will be enforced by the DRE. These rules apply to any situation involving disputed claims to grazing permits, farming lands, land use permits, or range management units on Navajo Trust Lands, Navajo Partitioned Lands, Eastern Navajo Agency, New Lands, and the Navajo Indian Reservation in whole part.
- C. **Use of Rules.** Mediation meetings shall not be bound by any formal rules of evidence. The DGCM and DGC may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Any objection regarding the conduct of the mediation or to any evidence shall be stated orally or in writing and state the ground(s) for the objection and turned into NNDA-Grazing Management Program (GMP).
- D. **Bodies Involved.** These rules provide procedures for use by the District Grazing Committees Members, Eastern Navajo Land Board, and Farm Boards (DGC/ENLB/FB), the Navajo Department of Agriculture (NNDA), the Office of Hearings and Appeals (OHA), and the Department of Resource Enforcement (DRE), and the Navajo Nation. Individuals and permittees may file complaints under these rules.
- E. **Limitation.** Complaints must be filed within five (5) years after the dispute arose. The complainant is responsible for ensuring that their complaint is filed in a timely manner.
- F. **Lawyers, advocates, and legal representation.** Lawyers, advocates, or legal representatives shall not be allowed to appear before the DGCM/DGC at the first or second mediation. However, individuals may seek legal advice in preparation for the mediation, filing of documents or other matters.
- G. **Filing the complaint.** Complaint forms may be picked up from and filed with any DGC/ENLB/FB Member or any NNDA Office. All complaint forms and packages will be copied in triplicate. The complainant will maintain all originals with a copy of NNGR-Form 1. Each complaint package will be checked for completeness and

distributed to:

1. DGC/ENLB/FBM;
2. DGC/ENLB/FB Chairperson; and
3. The NNDA Office in Window Rock.

DGC/ENLB/FB Member is initially mediate the dispute. The DGC/ENLB/FB Chairperson, assigned member, and NNDA shall make and keep official records of the mediations the grazing committee, land and farm board to ensure that the complaints are well documented and processed in a timely manner.

H. **Form of Complaint.** Complaints will be filed on forms provided by the NNDA (NNGR-Form 1) and must provide the following information:

1. Name, census number, address and telephone, or message number of the complainant.
2. A copy of grazing/land/farm use permit and current and last years tally count. If there is no tally count is available, the DGC/ENLB/FB Member will schedule a tally count/inspection within thirty (30) working days by providing written notice of a date, time, and location. It is the responsibility of the complainant and the respondent to be present.
3. Name of the individual the complaint is being filed against, the respondent.
4. A description of the area in dispute and the name(s) of the Chapter(s) in which the land is located, or the name of the store or other public business, which is closest to the area under dispute. Draw map.
5. A factual statement of why the complainant is entitled or has a valid interest in the grazing/land use. Attach any court orders, judgments, affidavits, stipulations, agreements, maps, census records, home site leases, or other documents, which may be relevant to the dispute.
6. A list of names, addresses and telephone numbers (if any) of each adjacent land user who may have an interest in the grazing or land use under dispute.

## II. COMPLAINTS TO DGC/ENLB/FB MEMBERS

A. **Duties of Assigned District Grazing Committee Member.** All duties performed by the DGC/ENLB/FB Member will be completed within thirty (30) days from the date the complaint is assigned. The duties of the DGC/ENLB/FBM assigned to process the complaint are:

1. To investigate, research, and collect all pertinent documents necessary to resolve the disputes. On large disputes and inter-district disputes, DGC/ENLB/FB Members from respective districts can collaborate in the investigation.
2. To serve as a mediator by hearing all sides of a dispute in an attempt to get the parties or groups to agree to a mutual settlement of differences and ensure compliance to the agreement within the provisions of the Navajo Nation

Laws. It is not the position of the DGC/ENLB/FB Member to act as judge or jury.

3. To report the results of their findings to the DGC/ENLB/FB and NNDA.
4. The DGC/ENLB/FB Member will make their recommendation concerning the final disposition of the dispute to the parties involved. If the recommendation is not successful, the case will be forwarded to the DGC/ENLB/FB Meeting for second mediation where a resolution of recommendation will be made in writing.
5. Upon meeting and devising the resolution, the DGC/ENLB/FB will forward the cause to NNDA-Grazing Management Program within five (5) days.

B. **Disqualification of DGC/ENLB/FB Member.** Where the designated DGC/ENLB/FB Member cannot perform his or her duty because of a conflict of interest or for any other reason, the complainant may request that another DGC/ENLB/FB Member be designated. The complainant shall submit a written request to the NNDA to recuse the designated DGC/ENLB/FB Member and appoint a substitute DGC/ENLB/FB Member.

C. **Assistance from Navajo Nation Departments and Programs.** The DGC/ENLB/FB Member can utilize the assistance of any official of the Navajo Nation, BIA, and/or other entities to obtain information regarding the land use or grazing dispute for use in mediation.

D. **Proof of Service by certified mail, United States Post Office.** The NNDA will provide written notice to the respondent and complainant by means of certified (USPO) mail. It is the responsibility of the complainant and the respondent to notify the people/witness on NNGR-Form 1, question # 4.

E. **Proof of Service by the DGC/ENLB/FB Member.** To expedite the dispute process a Proof of Personal Notice can be used; signed by the DGC/ENLB/FB Member and the recipient. If the recipient refuses to sign, "Refusal" will be written in the recipient's signature space and a witness will have to sign.

F. **Contents of the Proof of Service Notice and Proof of Personal Service.** The NNDA will send all certified letters with Proof of Service or Proof of Personal Service Notice and keep receipts. Notices must be mailed no less than fifteen (15) days prior to the meeting. All Proof of Service notices shall state:

- i. The name of respondent and complainant; case name.
- ii. The nature and subject of the dispute.
- iii. Initial and secondary meeting dates, time, and location.
- iv. Notice that a failure to attend the meeting will result in the waiver of rights to any claim.

g. **Agreement or disagreement of the parties.**

- i. Any agreement of the parties resolving a dispute shall be in writing as a DGC/ENLB/FB resolution.
- ii. The resolution shall identify the individuals possessing the proper interest in the dispute, the reason the individuals have such an interest and it shall have the signatures of interested parties in the dispute.
- iii. The DGC/ENLB/FB resolution must have a statement / notice indicating a thirty (30) day right to appeal.

**H. Conduct of Meeting.**

1. Quorum. A simple majority of the members of the DGC/ENLB/FB must be present to mediate a dispute, and where a quorum is not present the matter must be continued until the next regular or special meeting of the committee.
2. Report by the DGC/ENLB/FB Member. The DGC/ENLB/FB Member assigned to investigate the matter shall first make his oral report to the committee, which shall be listed on the agenda and recorded in the minutes. The report must contain the following:
  - a. The date of assignment to the dispute.
  - b. Proof of Service / Proof of Personal Notice issued with certified USPO receipts.
  - c. Copies of documents collected, a list of which shall become part of the adjudication record.
  - d. Attempts made to mediate the matter.
  - e. Any other information relevant to the dispute.
  - f. Any recommendations the DGC/ENLB/FB may have.
3. Testimony and argument. The DGC/ENLB/FB Chairperson will provide an equal amount of time for testimony by the complainant and respondent. The DGC/ENLB/FB Chairperson will also provide an equal amount of time to interested persons and witnesses claiming interest in the mediation.
4. The DRE, BIA, Land Department, and others may provide testimony, present evidence, or recommendations regarding the dispute.
5. Order of testimony.
  - a. The complainant shall be the first to testify followed by the respondent.
  - b. Witnesses should be brought in one at a time and not hear testimony of other witnesses so they will not be persuaded. Witnesses shall be excluded from the hearing/meeting room, except during the presentation of their testimony.
  - c. Both the respondent and complaint will have the same amount of witnesses that testify, whether they have grazing permits or not.
  - d. A total of three (3) people will be called upon as witnesses for the complainant and respondent and will be given equal time to testify.

(Those listed on NNGR-Form 1, question 4.) The complainant's witnesses will be allowed to speak first followed by the respondent's witnesses.

- e. The complainant and the respondent will each have an opportunity to make closing arguments and testimony.

I. **Consideration by DGC/ENLB/FB.** Following the close of testimony, the DGC/ENLB/FB will make a recommendation. No member of the committee will receive or listen to any communication on the part of any person with respect to the dispute while it is under consideration. No ex parte communications will be allowed. If the DGC/ENLB/FB decides to postpone the issuance of a recommendation to the next meeting, it must state reasons for the postponement and must be approved by a majority vote of the DGC/ENLB/FB.

J. **Recommendation by the DGC/ENLB/FB and Notice.**

1. The DGC/ENLB/FB will issue a recommendation in the form of a written resolution, which shall contain the following information:
  - a. A resolution with a number, chapter, date, identification of the agency, the district, and date.
  - b. The names of the parties the DGC/ENLB/FB determines to be entitled to land, farming, and livestock, and the reasons why they are entitled.
  - c. A description of the grazing, land, and farming use permit by date, number, and land description.
  - d. A list of the names and addresses of the individuals determined not to have an interest in the dispute.
  - e. A final statement in capital letters attached to the resolution:  
ALL PERSONS NOT AGREEING WITH THE RECOMMENDATIONS OF THE DISTRICT GRAZING COMMITTEE, EASTERN NAVAJO LAND BOARD, AND FARM BOARD MUST APPEAL TO THE OFFICE OF HEARINGS AND APPEALS WITHIN THIRTY (30) WORKING DAYS AFTER THE DATE OF THIS RECOMMENDATION. NO ACTION OR ENFORCEMENT WILL BE TAKEN BY THE DEPARTMENT OF RESOURCE ENFORCEMENT UNTIL THIRTY (30) WORKING DAYS AFTER THE DATE OF THIS RECOMMENDATION. IF THE RECOMMENDATION IS NOT APPEALED IT IS FINAL AND WILL BE ENFORCED.
2. The recommendation of the DGC/ENLB/FB must be recorded in the minutes of the DGC/ENLB/FB meeting. All supporting documents, findings by the DGC/ENLB/FB, meeting sign in sheet, and NNGR-Forms 1 and 2 will be turned in to NNDA-Window Rock, AZ within five (5) working days.

- K. **The Right To Appeal.** If a recommendation is made by the DGC/ENLB/FB and one party does not agree with the recommendation, then he or she may appeal the recommendation by submitting NNGR-Form 3, within thirty (30) working days of the mediation.
- L. Notification to and Action by the Department of Resource Enforcement (DRE). If the DGC/ENLB/FB recommendation is not appealed to the OHA within thirty (30) working days, the DRE will enforce the recommendation of the DGC/ENLB/FB pertaining to a grazing, land use permit, home site lease, range management or any other grazing issue. If the recommendation is not appealed, the NNDA, no later than ten (10) working days will provide the following to the DRE;
1. Copies of NNGR – Forms 1 and 2.
  2. A copy DGC/ENLB/FB resolution, copies of the minutes, all supporting documents regarding the grazing, farming, and land use dispute.
- M. **Prohibition of Construction or Improvements.** Until the dispute is resolved, no construction, improvements, destruction or alteration of the premises in the disputed area will be permitted during the investigation and appeal. The DRE and Navajo Nation Police will restrain any construction, destruction or other alteration of improvements. Any party can also file a temporary restraining order (TRO) with the Navajo Nation District Courts.

### III. APPEAL TO OFFICE OF HEARING AND APPEALS

- A. **How To Appeal.** The recommendation of the DGC/ENLB/FB can be appealed by completing NNGR-Form 3, and filing it with the NNDA in Window Rock, AZ. Appeal forms can be attained from any DGC/ENLB/FB Member, or any NNDA Office. Upon receipt of the appeal form, the NNDA will check the appeal packet for completeness. NNDA shall immediately provide notice to the DRE, the DGC/ENLB/FB Chairperson, and member.
- B. **Appeal Form Contents.** Each appeal document must contain:
1. The name, address and telephone number of the person appealing;
  2. A description of the recommendation being appealed including, the names of the DGC/ENLB/FB who rendered the recommendation and the date of the recommendation.
  3. The name and address of each individual having an interest in the dispute.
  4. A statement of reasons why the DGC/ENLB/FB recommendation was wrong, contrary to law, capricious or not supported by substantial evidence.
  5. A statement that the appeal is made in good faith and that the statements contained in the appeal are true.
- C. **Method of handling the appeal.** The OHA will hear the appeal based on the record

of documents submitted by NNDA.

D. **Record on appeal.** NNDA will prepare the record on appeal for presentation to OHA. The records will include:

1. The appeal documents;
2. The recommendation of the DGC/ENLB/FB, and copies of all notices or hearing, proof of service, proof of personal notice;
3. The minutes and records of the DGC/ENLB/FB meeting on the dispute;
4. All maps grazing or land use permits or other supporting documents submitted to the DGC/ENLB/FB for consideration;
5. Copies of all notices or hearing, proof of service;
6. A cover sheet with the names of the parties, description of the land under dispute, chronology of events of the dispute proceedings and listing of documents in the record.

E. **Action by Office of Hearing and Appeals.**

1. The Office of Hearing and Appeals will dismiss any appeal filed after the thirty (30) working day appeal period, or if the matter cannot be appealed.
2. The Office of Hearing and Appeals shall set a time, place, and date of hearing for the appeal and shall advise the NNDA of such date. If the Office of Hearing and Appeals indicates it will hear testimony from the interested parties OHA will give notice to the respondent and complainant by certified USPO mail, using a Proof of Service Notice or Proof of Personal Service. The certified USPO notice will be mailed no less than fifteen (15) days prior to the hearing by OHA.
3. The Office of Hearing and Appeals will not receive any communications from any interested party. The Hearing Officer may consult with the Navajo Nation Departments, Programs and/or other entities with regard to the law applicable to the appeal.
4. The OHA will render a decision no later than thirty (30) days following the date of when the NNDA forwarded the file to OHA.

F. **Decision on Appeal-Contents.** The decision of the Office of Hearing and Appeals shall be in writing. The written decision shall contain the following information:

1. The date of the appeal and the date of hearing.
2. The names of the individuals who appeared and argued at the hearing.
3. The decision of the Office of Hearing and Appeals.
4. A list of the names of the individuals who were found to have an interest in the dispute.
5. A notification of the appeal rights of the parties as follows:  
THIS IS THE DECISION OF THE OFFICE OF HEARING AND APPEALS. ANY PERSON WHO CLAIMS TO BE INJURED BY THE DECISION MUST FILE AN APPEAL TO THE SUPREME COURT OF

THE NAVAJO NATION WITHIN 30 DAYS OF THE DATE OF THIS DECISION OR HE OR SHE MAY FOREVER LOSE THE RIGHT TO DO SO. THIS DECISION WILL BECOME FINAL AFTER THE APPEAL PERIOD AND WILL BE FULLY ENFORCED BY THE DEPARTMENT OF RESOURCE ENFORCEMENT.

- G. **Notice of decision.** OHA will officially notify NNDA of the decision. NNDA will notify the DGC/ENLB/FB Chairperson, the assigned member, and DRE. OHA will also notify the respondent and complainant of the decision by means of certified mail through the USPO, or Proof of Personal Notice.
- H. **Record Disposition: Preparation for Court Action.** All records regarding the dispute will be placed in the official records of NNDA where they shall be available for the inspection and copying by any interested party or their attorney or legal representative.
- I. **Action in the Absence of Court Action.** In the absence of an appeal, the decision of the OHA is final and will be fully enforced by the Department of Resources Enforcement and all law enforcement of the Navajo Nation.

#### IV. NAVAJO NATION SUPREME COURT

Any party adversely affected by a final decision of the Office of Hearings and Appeals may appeal the decision to the Navajo Nation Supreme Court within thirty (30) working days of the final decision; otherwise, the decision shall be final. The Court shall review the decision of the Hearing Officer on the record only. The decision shall not be subject to de novo review on appeal. The court may substitute its judgment on questions of law, but shall otherwise uphold the decision of the Hearing Officer unless the Court finds the decision to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.